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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 12-00888-EJD
Plaintiff,)	
v.)	PLEA AGREEMENT
JOHN GERINGER,)	
Defendant.)	

I, John Geringer, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to Counts One, Two, and Twenty-Seven of the captioned Indictment charging me with Conspiracy to Commit Mail and Wire Fraud, in violation of 18 U.S.C. § 1349, Mail Fraud, in violation of 18 U.S.C. § 1341, and Securities Fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. §§ 240.10b-5 and 240.10b5-2. I agree that the elements of 18 U.S.C. § 1349 are as follows:

Filed

JUN 04 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

(1) Two or more persons agreed, in some way or manner, to try to accomplish a common and unlawful plan to commit mail or wire fraud; and

(2) I knew the unlawful purpose of the plan and wilfully joined in it.

I agree that the maximum penalties for 18 U.S.C. § 1349 are as follows:

- | | | |
|----|---------------------------------|--|
| a. | Maximum prison sentence | 20 years |
| b. | Maximum fine | \$ 250,000 (or twice the gross gain or loss, whichever is greater) |
| c. | Minimum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | Determined by the Court |
| f. | Forfeiture | Criminal proceeds |

I agree that the elements of 18 U.S.C. § 1341 are as follows:

(1) I knowingly made up a scheme or plan for obtaining money by making false promises or statements,

(2) I knew the promises or statements were false,

(3) The promises or statements were material,

(4) I acted with the intent to defraud, and

(5) I used, or caused to be used, the mails to carry out an essential part of the scheme.

I agree that the maximum penalties for 18 U.S.C. § 1341 are as follows:

- | | | |
|----|---------------------------------|--|
| a. | Maximum prison sentence | 20 years |
| b. | Maximum fine | \$ 250,000 (or twice the gross gain or loss, whichever is greater) |
| c. | Minimum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | Determined by the Court |
| f. | Forfeiture | Criminal proceeds |

I agree that the elements of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5 are as follows:

(1) I knowingly used a device or scheme to defraud someone,

(2) I knew my acts were in connection with the purchase or sale of shares in the GLR

Growth Fund, LP,

(3) I directly or indirectly used the mails in connection with these acts,

(4) I acted for the purpose of defrauding buyers or sellers of shares in the GLR Growth

Fund, LP.

I agree that the maximum penalties for 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5 are as follows:

- | | | |
|----|---------------------------------|-------------------------|
| a. | Maximum prison sentence | 20 years |
| b. | Maximum fine | \$ 5,000,000 |
| c. | Minimum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | Determined by the Court |
| f. | Forfeiture | Criminal proceeds |

I acknowledge that pleading guilty may have consequences with respect to my immigration status if I am not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, which may include the offenses to which I am pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and I understand that no one, including my attorney or the district court, can predict to a certainty the effect of this conviction on my immigration status. I nevertheless affirm that I want to plead guilty regardless of any immigration consequences that may result from my guilty plea, even if the consequence is my automatic removal from the United States.

I understand that I am pleading guilty to multiple violations and that the Court may order that my sentence for each violation run consecutively.

2. I agree that I am guilty of the offenses to which I am pleading guilty, and I agree that the following facts are true:

In 2002, Chris Luck, Keith Rode, and I established a limited liability company entitled Geringer Luck & Rode, LLC ("LLC") located at 4444 Scotts Valley Drive, Scotts Valley, CA. Additionally, we formed GLR Capital Management LLC, and GLR Growth Fund LP ("Fund"). The LLC was the parent company that paid most of the overhead for GLR Capital Management and the Fund. GLR Capital Management was responsible for paying our salaries.

1 Chris Luck, Keith Rode, and I were friends before the establishment of the LLC. I had experience in
2 finance, trading, and insurance, and had the necessary licenses and registrations to manage investments.
3 My primary responsibilities at the Fund consisted of client relations, maintaining client accounts, and
4 allocation of investment funds. Luck had experience in business operations, marketing, and running
5 start-up companies. Luck's primary responsibilities included managing private companies into which
6 the Fund invested (including MediaTile and Digital Delivery Networks, Inc.). Luck also participated in
7 the recruitment of investors into the Fund. On certain occasions, Luck sat down with potential investors
8 and explained to them the reasons why they should invest with the Fund. Rode is and was a Certified
9 Public Accountant, and had experience in accounting and taxes. Rode prepared Fund investor
10 statements, and prepared GLR's tax returns. By combining all of our various skills, we sought to create
11 and manage an investment company. We recruited investors with promises of high returns, with
12 investments divided 75% into equities and 25% into direct company investments.

13 We formed the Fund in 2003. New investments into the Fund were "locked in" for a twelve months.
14 After that, investors could request withdrawal of all or part of their funds. Investors also had the option
15 of having their investments rolled over for another year. Investors who wanted to withdraw investment
16 funds were required to give GLR written notice sixty days prior to the date the funds would be returned.
17 We recruited new investors solely through word of mouth and referrals.

18 Prior to 2008, the Fund invested in a combination of stocks and private company investments.
19 However, between 2004 and 2008, Luck encouraged Rode and me to invest increasing amounts of
20 investor money into private companies. After some early success in private company investments, and
21 in line with Luck's wishes, I began to divert more and more investor funds into private companies.
22 Even though we were still representing to potential investors that their investments would be allocated
23 20% in S&P 100, 20% in S&P 500 Index, 20% in NASDAQ, 15% in Dow Jones 30, and 25% in direct
24 company investments, I began to divert more and more of the Fund into private companies.

25 Since private company investments generated no returns to the Fund except upon sale, the Fund had
26 less money available for trading. This lack of money created additional pressure on me to generate high
27 returns in the Fund's trading accounts. As a result of this pressure, I began falsifying broker account
28 statements to reflect better performance, hoping this would continue to justify using investor funds for
even more private company investments. Based upon my false performance reports, at the end of 2008,

1 Luck, Rode, and I each took a bonus payment of approximately \$1.1 million from the Fund. This cycle
2 of falsified trading gains used to justify increased private company investments continued from 2004
3 through May 25, 2012, when the Securities and Exchange Commission filed an administrative action
4 against me.

5 After 2008, following a major liquidation by some significant investors and with worsening
6 economic conditions, I made the decision to invest the Fund exclusively into one of two private
7 companies – MediaTile and Digital Delivery Networks, Inc. (“DDNI”). Both MediaTile and DDNI are
8 located in Scotts Valley. Luck and Rode served on the Boards of Directors for MediaTile and DDNI.
9 Although I believed that the limited partnership agreement empowered me to allocate Fund money as I
10 deemed appropriate based on market conditions, I did not initially disclose this action to Luck, Rode, or
11 the investors.

12 In or about April 2009, *I.H.*, a Fund investor, requested the return of her \$12 million investment into
13 the Fund. Since most of the Fund was invested in DDNI and MediaTile, there were not enough liquid
14 funds to repay her. Then, I knew that I had to reimburse the Fund for the \$1.1 million bonus I had taken
15 at the end of 2008, and that I had to disclose the status of the Fund and *I.H.*’s request to Luck and Rode.
16 Shortly thereafter, Luck and I met in person, and we called Rode. During this meeting, I told Luck and
17 Rode that they each needed to repay the \$1.1 million bonus they had taken at the end of 2008. Luck and
18 Rode demanded an explanation for my request that they return this bonus. I explained to Luck and Rode
19 the status of Fund, including my falsified broker account statements, *I.H.*’s request, and that we all
20 needed to repay our \$1.1 million bonuses. During this meeting, we decided to attempt to negotiate
21 installment payments to *I.H.* Soon after this meeting, on or about April 23, 2009, I drafted and signed a
22 document (hereinafter referred to as my “confession”). In this document, I truthfully wrote that I had
23 “falsified trading statements, reports (both written and verbal) and trades to the GLR Growth Fund, L.P.
24 and GLR Capital Management, LLC.” I wrote this document in response to the verbal admission I had
25 recently made to my partners, Luck and Rode.

26 After my early-2009 confession to Luck and Rode, the three of us had a conversation when we
27 decided that we had a choice to make: we could either report my misconduct to law enforcement or we
28 could attempt to earn the lost money back for our investors. We decided to try to make our investors
whole. In choosing this path, we knew that we would need to recruit additional investors. We also

1 knew that during this period of recruitment of new investors, beginning in mid-2009, Luck and I would
2 have to and, in fact, did make many false and misleading statements and representations to potential
3 investors. Among these false statements and material omissions, Luck and I led potential investors to
4 believe that the Fund had a positive historical stock market performance, had made and would continue
5 to make diversified equity trades, and would not divert all of an investment into private companies, such
6 as MediaTile and DDNI. Luck and I, even though we made these representations to investors, knew
7 them to be false. We understood that if we were honest with potential investors, many would not invest
8 in the Fund.

9 Both before and after my confession to my partners, Luck and I provided certain documents to
10 potential investors in order to encourage them to invest in the Fund. I knew, and after my confession in
11 April 2009 I believe that Luck knew, that these new investor materials contained several inaccuracies.
12 For instance, this investment material stated that in 2003 through at least 2009, the Fund asset allocation
13 was: 20% in S&P 100, 20% in S&P 500 Index, 20% in NASDAQ, 15% in Dow Jones 30, and 25% in
14 direct company investments. This asset allocation was no longer accurate after 2008, and Luck and I
15 knew that to be true. Luck and I continued to tell investors that this asset allocation was accurate,
16 because we believed that claiming the Fund provided diverse asset allocation was necessary to causing
17 new investors to invest in the Fund.

18 Furthermore, I wrote "Member NASD and SEC approved" on the investor materials. I knew that the
19 Fund was not a member of NASD, nor was it approved by the SEC. I understand that by using this
20 language on the investment materials, investors may have felt a false sense of comfort, or been
21 encouraged to invest in the Fund. Also, our investment materials claimed that the Fund was
22 independently audited each year. This, too, was a false statement. I believed that placing this statement
23 on the investment materials would provide a sense of comfort to potential investors, and encourage their
24 investment into the Fund.

25 Before and after my confession, Rode mailed quarterly statements to each investor and prepared tax
26 statements. After my confession, Rode continued to send to each investor a quarterly statement showing
27 the Fund's investment performance. I believe these account statements were misleading, because they
28 created the false impression among both current and potential investors that the Fund had realized actual
and profitable stock market returns; when, in fact, we knew that it had not. The percentage return

1 reported to investors was based solely upon our internal valuation of DDNI and MediaTile, the private
2 companies that the Fund was exclusively invested in at this point. Rode, after learning about my pre-
3 April 2009 falsified broker account statements, failed to send corrected account statements to investors.
4 I believe that Rode knew that doing so would have both caused old investors to demand the return of
5 their investments, as well as prevent us from recruiting any new investors into the Fund. For example,
6 on or about April 27, 2011, Luck, Rode, and I mailed or caused to be mailed a false and misleading
7 account interest statement to an investor with the initials L.B.

8 In total, I believe the Fund invested between \$45 and \$50 million into two private companies,
9 MediaTile and DDNI. Neither MediaTile nor DDNI made any payments to the Fund, although the Fund
10 was the largest shareholder in each company. Luck, Rode, and I had hoped to sell MediaTile and DDNI
11 for substantial profits, and use these profits to make all of our investors whole.

12 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the
13 rights to a jury trial with the assistance of an attorney; to confront and cross-examine government
14 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
15 Amendment claims; to any further discovery from the government and to pursue any affirmative
16 defenses and present evidence.

17 4. I agree to give up my right to appeal my convictions, the judgment, and orders of the
18 Court. I also agree to waive any right I may have to appeal any aspect of my sentence, including any
19 orders relating to forfeiture and/or restitution.

20 5. I agree not to file any collateral attack on my convictions or sentence, including a petition
21 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, at any time in the future after I am sentenced, except that I
22 reserve my right to claim that my counsel was ineffective in connection with the negotiation of this
23 Agreement or the entry of my guilty plea. I also agree not to seek relief under 18 U.S.C. § 3582.

24 6. I agree not to ask the Court to withdraw my guilty pleas at any time after they are
25 entered. I understand that by entering into this Agreement: (a) I agree that the facts set forth in
26 Paragraph 2 of this Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A) in any
27 subsequent proceeding, including at trial, in the event I violate any of the terms of this Agreement, and
28 (b) I expressly waive any and all rights under Fed. R. Crim. Proc. 11(f) and Fed. R. Evid. 410 with

1 regard to the facts set forth in Paragraph 2 of this Agreement in any such subsequent proceeding. I
 2 understand that the government will not preserve any physical evidence obtained in this case.

3 7. I agree that the Court will calculate my sentencing range under the Sentencing
 4 Guidelines. I understand that the Court must consult those Guidelines and take them into account when
 5 sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I agree that the Sentencing
 6 Guidelines offense level will be calculated as follows, although I specifically reserve my right to argue
 7 the appropriate loss amount, dispute any adjustment for number of victims, and seek a below-Guidelines
 8 sentence based on factors set forth in 18 U.S.C. § 3553(a). I agree that the enhancement for violating
 9 Securities Laws applies. I understand that the government may oppose my arguments and, specifically,
 10 that it may argue for a loss amount greater than \$50 million, and more than 50 victims:

- | | | | |
|----|----|---|--------------------|
| 11 | a. | Base Offense Level (U.S.S.G. § 2B1.1(a)(1)) | 7 |
| 12 | b. | Specific offense characteristics: | |
| 13 | | Loss Amount, §2B1.1(b)(1) | [to be litigated] |
| 14 | | Victim adjustment, § 2B1.1(b)(2) | [to be litigated] |
| 15 | | Violation of Securities Laws, § 2B1.1(b)(19) | +4 |
| 16 | c. | Acceptance of Responsibility: | -2 or - 3 |
| 17 | | (If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled | |
| 18 | | to a two or three-level reduction for acceptance of responsibility, | |
| 19 | | provided that I forthrightly admit my guilt, cooperate with the | |
| 20 | | Court and the Probation Office in any presentence investigation | |
| 21 | | ordered by the Court, and continue to manifest an acceptance of | |
| 22 | | responsibility through and including the time of sentencing.) | |
| 23 | d. | Adjusted Offense Level: | [to be determined] |

22 I understand that if the government makes and prevails on the two arguments outlined above (regarding
 23 loss amount and number of victims), my Adjusted Offense Level would be 36. I also understand that the
 24 Court is not bound by the Guidelines calculations above, the Court may conclude that a higher
 25 Guidelines range applies to me, and, if it does, I will not be entitled, nor will I ask to withdraw my guilty
 26 pleas. I also agree that regardless of the sentence that the Court imposes on me, I will not be entitled,
 27 nor will I ask, to withdraw my guilty pleas. Although I reserve the right to seek a below-Guidelines
 28 sentence based on factors set forth in 18 U.S.C. § 3553(a), I understand that the government is free to

1 argue against any such reductions. I agree to be bound by the Court's findings as to the appropriate
2 Guideline calculations.

3 8. I agree that regardless of any other provision of this Agreement, the government may and
4 will provide the Court and the Probation Office with all information relevant to the charged offenses and
5 the sentencing decision. I agree that, based on the nature of the offense, the Court should impose the
6 following special condition of supervised release which is reasonably related to deterrence and
7 rehabilitation:

8 Special Condition (Searches)

9 The defendant shall submit his person, residence, office, vehicle, or any property under
10 his control to a search. Such a search shall be conducted by a United States Probation
11 Officer or any federal, state, or local law enforcement officer at any time with or without
suspicion. Failure to submit to such a search may be grounds for revocation; the
defendant shall warn any residents that the premises may be subject to searches.

12 9. I agree to pay restitution for all the losses caused by all the schemes or offenses with
13 which I was charged in this case, and I agree that the amount of restitution will not be limited to the loss
14 attributable to the counts to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that
15 the Court may order and I will pay restitution in an amount of to be set by the Court after consideration
16 of my criminal conduct in this matter, even if not charged and even if not ruled to be "relevant conduct,"
17 and any victim impact statements submitted in advance of my sentencing. I agree that any fine,
18 forfeiture, or restitution imposed by the Court against me will be immediately due and payable and
19 subject to immediate collection by the government and I understand that the government may seek
20 immediate collection of the entire fine, forfeiture, or restitution from any assets without regard to any
21 schedule of payments imposed by the Court or established by the Probation Office. I agree that I will
22 make a good faith effort to pay any fine, forfeiture, or restitution I am ordered to pay. Before or after
23 sentencing, I will upon request of the Court, the government, or the Probation Office, provide accurate
24 and complete financial information, submit sworn statements and give depositions under oath
25 concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and
26 release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to
27 pay the special assessment at the time of sentencing.
28

10. I agree to cooperate with the U.S. Attorney's Office before and after I am sentenced. My cooperation will include, but will not be limited to, the following:

- a. I will respond truthfully and completely to any and all questions put to me, whether in interviews, before a grand jury or at any trial or other proceeding;
- b. I will provide all documents and other material asked for by the government;
- c. I will testify truthfully at any grand jury, court or other proceeding as requested by the government;
- d. I will surrender any and all assets acquired or obtained directly or indirectly as a result of my illegal conduct;
- e. I will request continuances of my sentencing date, as necessary, until my cooperation is completed;
- f. I will not reveal my cooperation, or any information related to it, to anyone without prior consent of the government.
- g. I will participate in undercover activities under the supervision of law enforcement agents or the U.S. Attorney's Office.

11. I agree that the government's decision whether to file a motion pursuant to U.S.S.G. § 5K1.1, as described in the government promises section below, is based on its sole and exclusive decision of whether I have provided substantial assistance and that decision will be binding on me. I understand that the government's decision whether to file such a motion, or the extent of the departure recommended by any motion, will not depend on whether convictions are obtained in any case. I also understand that the Court will not be bound by any recommendation made by the government.

12. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence; violate the terms of my pretrial release; not to intentionally provide false information or testimony to the Court, the Probation Office, Pretrial Services, or the government; and not to fail to comply with any of the other promises I have made in this Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises, but I will not be released from my guilty plea.

13. If I am prosecuted after failing to comply with any promises I made in this Agreement, then (a) I agree that any statements I made to any law enforcement or other government agency or in

1 Court, whether or not made pursuant to the cooperation provisions of this Agreement or proffer
 2 agreements, may be used in any way; (b) I waive any and all claims under the United States
 3 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
 4 Evidence, or any other federal statute or rule, to suppress or restrict the use of my statements, or any
 5 leads derived from those statements; and (c) I waive any defense to any prosecution that it is barred by a
 6 statute of limitations, if the limitations period has run between the date of this Agreement and the date I
 7 am indicted.

8 14. I agree to forfeit my interest in the funds I collected as deposits resulting from my crime
 9 (hereinafter "subject property"). I admit that the subject property was proceeds from the offenses to
 10 which I am pleading guilty and thus is forfeitable to the United States pursuant to the provisions of 18
 11 U.S.C. § 982; and the procedures outlined in Rule 32.2 of the Federal Rules of Criminal Procedure and
 12 21 U.S.C. § 853. I relinquish any and all right, title, and interest I may have in the subject property and
 13 agree that such right, title, and interest can be forfeited to the United States without further notice to me.
 14 I also agree I will not contest any administrative or judicial forfeiture proceeding (whether criminal,
 15 civil, state or federal) which may be brought against said property. I further agree to waive all
 16 constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any
 17 other means) to any forfeiture carried out in accordance with this Agreement on any grounds, including
 18 that the forfeiture constitutes an excessive fine or punishment or that the forfeiture proceeding was
 19 brought in violation of the statute of limitations.

20 15. I agree that this Agreement contains all of the promises and agreements between the
 21 government and me, and supersedes any other agreements, written or oral. No modification of this
 22 Agreement shall be effective unless it is in writing and signed by all parties.

23 16. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District of
 24 California only, and does not bind any other federal, state, or local agency.

25 The Government's Promises

26 17. The government agrees to move to dismiss any open charges pending against the
 27 defendant in the captioned Indictment at the time of sentencing.

28 18. The government agrees not to file any additional charges against the defendant that could

1 be filed as a result of the investigation that led to the captioned Indictment.

2 19. The government agrees not to use any statements made by the defendant pursuant to this
3 Agreement against him, unless the defendant fails to comply with the promises in this Agreement.

4 20. If, in its sole and exclusive judgment, the government decides that the defendant has
5 cooperated fully and truthfully, provided substantial assistance to law enforcement authorities within the
6 meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this Agreement, it will file with the
7 Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that explains the nature and extent of the
8 defendant's cooperation and recommends a downward departure.

9 The Defendant's Affirmations

10 21. I confirm that I have had adequate time to discuss this case, the evidence, and this
11 Agreement with my attorney, and that my attorney has provided me with all the legal advice that I
12 requested.

13 22. I confirm that while I considered signing this Agreement and, at the time I signed it, I
14 was not under the influence of any alcohol, drug, or medicine.

15 23. I confirm that my decision to enter this guilty plea is made knowing the charges that have
16 been brought against me, any possible defenses, and the benefits and possible detriments of proceeding
17 to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or
18 threatened me to enter into this Agreement.

19 Dated:

6/4/14


JOHN GERINGER
Defendant

MELINDA HAAG
United States Attorney

24 Dated:

6/4/14



JEFF SCHENK
Assistant United States Attorney

27 I have fully explained to my client all the rights that a criminal defendant has and all the terms of
28 this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights

1 he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead
2 guilty is knowing and voluntary.

3
4 Dated:

6-4-14


WM. MICHAEL WHELAN
Attorney for Defendant